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Minn. R. Civ. App. P. 136.01, subd. 1(c).*

**STATE OF MINNESOTA
IN COURT OF APPEALS
A22-0947**

In the Matter of the Child of:
T. M. M. and R. A. D.-W., Parents.

**Filed January 17, 2023
Affirmed
Frisch, Judge**

St. Louis County District Court
File No. 69DU-JV-21-166

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Kimberly J. Maki, St. Louis County Attorney, Benjamin J. Ranallo, Assistant County Attorney, Duluth, Minnesota (for respondent St. Louis County Public Health and Human Services Department)

Karen Johnson, South Range, Wisconsin (guardian ad litem)

Considered and decided by Frisch, Presiding Judge; Reyes, Judge; and Slieter, Judge.

NONPRECEDENTIAL OPINION

FRISCH, Judge

Appellant argues that the district court abused its discretion by determining that a statutory basis supports the termination of his parental rights and that termination was in the child's best interests. Because the district court did not abuse its discretion in terminating appellant's parental rights, we affirm.

FACTS

Days after A.G.R. (the child) was born, respondent-county petitioned for termination of mother's parental rights. At the time, the identity of the child's father was unknown, and the child was placed in the county's custody.

A paternity test confirmed appellant-father R.A.D.-W. as the child's father. The social worker assigned to the matter declined to place the child with father upon learning of his identity without first assessing the safety of such a placement. The social worker began working with father on a case plan.

The social worker learned of allegedly violent behavior by father and recommended additions to the case plan, including father's participation in a Domestic Abuse Intervention Program (DAIP) and a psychological evaluation. The social worker hoped that these case-plan additions would address father's violent pattern of behavior and provide "honest" information about him. The county filed an amended petition identifying father and requesting termination of his parental rights.

Father completed a psychological evaluation and, after some initial confusion over acceptable DAIP programming, father enrolled in an approved 27-week program. Father attended twice-weekly supervised visits with the child and began working with a family mentor through Families Rise Together. The social worker reminded father that the case plan was designed for father to demonstrate to the county that he was addressing his abusive behavior, making meaningful progress in DAIP, and being honest about past violence.

The district court heard testimony from 13 witnesses over three days and received 33 exhibits on the amended petition. The district court also received letter briefs from the parties before ordering the termination of father's parental rights.

Father appeals.

DECISION

Father argues that the district court abused its discretion by determining that a statutory basis exists to support the termination of his parental rights and that termination was in the child's best interests. We address each argument in turn.

I. The district court did not abuse its discretion by determining that a statutory basis supports the termination of father's parental rights.

Father challenges the district court's determination that three statutory grounds exist to terminate his parental rights: palpable unfitness, a failure to correct the conditions that led to out-of-home placement, and that the child is neglected or in foster care. But "we need only one properly supported statutory ground in order to affirm a termination order." *In re Welfare of Child of J.K.T.*, 814 N.W.2d 76, 92 (Minn. App. 2012). Because we conclude that the district court did not abuse its discretion in determining that father was palpably unfit, we decline to address the other statutory grounds that the district court used to support its termination decision.

Father argues that the district court abused its discretion in determining that he was palpably unfit to parent because the district court did not make any findings about a causal connection between his behavior and his relationship with the child. Father also asserts

that the district court's findings are insufficient to show a likelihood of continuing or permanently damaging the child. We disagree.

“Parental rights are terminated only for grave and weighty reasons.” *In re Welfare of M.D.O.*, 462 N.W.2d 370, 375 (Minn. 1990). Whether to terminate parental rights is discretionary with the district court. *In re Welfare of Child of R.D.L.*, 853 N.W.2d 127, 136 (Minn. 2014). A district court may order the termination of parental rights if it (1) finds by clear and convincing evidence that a statutory condition exists to support termination, (2) determines that termination is in the child's best interests, and (3) finds that reasonable efforts toward reunification were either made or were not required. Minn. Stat. §§ 260C.301, subds. 1(b), 7, 8, .317, subd. 1 (2022); *see also In re Welfare of Child. of S.E.P.*, 744 N.W.2d 381, 385 (Minn. 2008).

A district court has statutory grounds to terminate parental rights on the basis that the parent is palpably unfit if it finds

[the] parent is palpably unfit to be a party to the parent and child relationship because of a consistent pattern of specific conduct before the child or of specific conditions directly relating to the parent and child relationship either of which are determined by the court to be of a duration or nature that renders the parent unable, for the reasonably foreseeable future, to care appropriately for the ongoing physical, mental, or emotional needs of the child.

Minn. Stat. § 260C.301, subd. 1(b)(4). This requires a “consistent pattern of specific conduct or specific conditions existing at the time of the hearing that appear will continue for a prolonged, indefinite period and that are permanently detrimental to the welfare of the child.” *In re Child. of T.R.*, 750 N.W.2d 656, 661 (Minn. 2008). The conduct or

conditions must be “of a nature and duration that renders the parent unable, for the reasonably foreseeable future, to care appropriately for the child’s ongoing needs.” *See id.* at 662-63. In other words, there must be a connection between the behavior and the parent’s ability to care for the child. *Id.* A district court may take past patterns of behavior into account in determining whether those patterns are likely to continue. *See In re Welfare of J.D.L.*, 522 N.W.2d 364, 368-69 (Minn. App. 1994).

On appeal, we “review the termination of parental rights to determine whether the district court’s findings address the statutory criteria and whether the district court’s findings are supported by substantial evidence and are not clearly erroneous.” *S.E.P.*, 744 N.W.2d at 385. In so doing, we “review the district court’s findings of the underlying or basic facts for clear error, but we review its determination of whether a particular statutory basis for involuntarily terminating parental rights is present for an abuse of discretion.” *In re Welfare of Child. of J.R.B.*, 805 N.W.2d 895, 901 (Minn. App. 2011), *rev. denied* (Minn. Jan. 6, 2012). “A finding is clearly erroneous if it is either manifestly contrary to the weight of the evidence or not reasonably supported by the evidence as a whole.” *T.R.*, 750 N.W.2d at 660-61 (quotation omitted). “In applying the clear-error standard, we view the evidence in a light favorable to the findings. We will not conclude that a factfinder clearly erred unless, on the entire evidence, we are left with a definite and firm conviction that a mistake has been committed.” *In re Civ. Commitment of Kenney*, 963 N.W.2d 214, 221 (Minn. 2021) (quotation and citation omitted). We must “fully and fairly consider the evidence, but so far only as is necessary to determine beyond question that [the evidence] reasonably tends to support the findings of the factfinder.” *Id.* at 223 (quotation omitted). Thus,

“[w]hen the record reasonably supports the findings at issue on appeal, it is immaterial that the record might also provide a reasonable basis for inferences and findings to the contrary.” *Id.* (quotation omitted).

Connection Between Father’s Behavior and His Relationship with the Child

In concluding that father was palpably unfit to parent, the district court made findings that a connection exists between the specific conditions it identified as demonstrating father’s palpable unfitness and his relationship with the child. Regarding these conditions, the district court pointed specifically to father’s history of domestic violence, his evasiveness in DAIP and in his psychological evaluation, and his inability to be honest about his assaultive behavior and substance abuse as the conditions that made father unable to parent the child for the reasonably foreseeable future. The district court made many findings that those conditions related directly to father’s relationship with the child. First, the district court found that father had been abusive in his romantic relationships and that he participated in abusive incidents in the presence of children. The district court also found that father’s alcohol use directly impacted his interactions with children. Second, the district court found father engaged in a pattern of controlling his romantic partners and then becoming violent. The district court found that “exposure to these patterns is harmful to children and goes a long way toward explaining why the Petition must be granted.” Third, the district court found that father’s failure to internalize DAIP lessons showed that father would not be a safe custodian.

These findings are supported by the record. First, three of father’s prior partners testified to their experience of abuse from father, including incidents where he was abusive

in the presence of children. For example, one partner testified that father pushed her while she was holding her child and she dropped her child. Another partner testified that father's drinking "got worse" about six months into their relationship, and at that point, father began playing so roughly with the children that lived with her that they cried.

Second, two of father's partners testified about how their relationship with father was stable at first but ultimately became violent, and ways in which that impacted their children. One partner testified that when father was physically assaulting her, her child would try to take video through vents because her child thought that the partner might later need video to show the assault. The DAIP expert testified about tactics in addition to physical or sexual violence that a perpetrator of domestic violence might use to gain control over a partner, including using children, economic abuse, and coercion or threats. Another of father's partners testified that she returned to the relationship after an assaultive incident because father stole her children's birth certificates and Social Security cards and she wanted to get them back.

Third, the DAIP facilitator reported that father repeatedly showed an unwillingness to acknowledge his behavior and change, except for one report about 20 weeks into the course where the facilitator commented that father was "pretty forthcoming," more so than in all of his weeks of group class. But despite this report, father continuously denied engaging in violent behavior to the court. The DAIP expert also testified as to concerns that children may not be safe in a home with a domestic-violence perpetrator. The expert testified that domestic-violence perpetrators will use children as leverage to garner partner compliance, such as by failing to properly care for them so that the children are more

difficult to parent or become upset, or by convincing the child that the victimized parent is somehow deficient. The expert also testified that such abuse is “almost never” isolated only against the domestic partner because the abuse also diminishes them as a parent. The expert testified that the violence scares the children and demonstrates to the children the perpetrator’s capacity to cross a line. The DAIP expert also testified that violence toward children tends to happen when the children are old enough to resist and not comply. The expert testified, “[I]t’s just not very common that we see a man who’s committing—who’s doing this stuff to their intimate partner and it doesn’t bleed over into the kids in some way or somehow.” And the psychologist who evaluated father testified that father’s history of violence added concern to the results of the parental stress index test—that father views the child as “fussy”—because it indicated an increased risk that father would react poorly to stress or lash out. The district court’s findings that father’s history of violent behavior toward his partners and in the presence of children is connected to his relationship with his child are supported by the record.

Father points to the fact that his supervised visits with the child were successful. The district court acknowledged reports that father’s visits with the child went well and there was “scant evidence” of violence against children. But the existence of such findings and evidence in support does not negate the sufficiency of the district court’s findings in support of a determination that father was palpably unfit. *See Kenney*, 963 N.W.2d at 223. And although father also presented favorable testimony about his capabilities as a partner and a father, the district court repeatedly discredited father and witnesses who denied father’s history of domestic abuse and attested that he was a safe and loving caregiver. In

contrast, the district court found as credible the witnesses who testified to father's history of domestic violence and alcohol use, his repeated refusal to acknowledge that there was a problem and his evasiveness, and the potential risk of future violence against a child. The "stark" difference in witness credibility was a significant factor in the district court's decision. "Considerable deference is due to the district court's decision because a district court is in a superior position to assess the credibility of witnesses." *In re Welfare of L.A.F.*, 554 N.W.2d 393, 396 (Minn. 1996). We see no abuse of discretion in the district court's determination that father's history of violent behavior was connected to his relationship with the child.

Prolonged Period and Permanent Detriment

The district court also made findings that father's history of domestic abuse and his denial of that abuse was likely to continue for a prolonged, indefinite period of time and would be permanently detrimental to the child. The district court made several findings that father was likely to continue his pattern of violent behavior for a prolonged, indefinite period of time because of his inability or unwillingness to address this issue. The district court found that, although father participated in DAIP, his failure to acknowledge his behavior prevented him from meaningful participation. It found that father continuously denied engaging in violent behavior and viewed himself in an unrealistically positive light. The district court also found that father's use of alcohol exacerbated his violent behavior, and that father similarly denied that he had consumed alcohol since 2018 and continued to deny more recent use contrary to credible contrary testimony.

These findings are supported by the record. The psychologist found father to be evasive, and his defensiveness and unrealistic self-image caused invalid results for two tests. The psychologist believed “genuine engagement” in recommended services would result in a “fair” prognosis for offering the child a safe and stable environment protected from exposure to violence. But, as the district court found, the record reflects that father failed to “genuinely engage” in DAIP. The DAIP expert testified about what they believed would show progress toward changing violent behavior. The expert testified that “the work has to be inward” and that merely attending DAIP classes does not make a person “safe”—there needs to be some indication of change. The expert testified that it would be concerning if a participant acknowledged past behavior in class but consistently denied the issue outside of class because usually a change encompasses aspects of a DAIP participant’s broader life. The DAIP expert testified that besides substance abuse, the biggest barrier to change is when the perpetrator of domestic violence feels like the victim. Father denied that he had ever been physically violent toward a partner, alone or in the presence of children, or that he had ever lied about it. He maintained that denial when he testified again after the district court heard testimony from three former partners describing incidents of abuse, including incidents where children were present. Father took a similar position with respect to his assertion that he had not consumed alcohol since 2018 and denied that alcohol had a negative effect on his behavior.¹

¹ Father asserts that there have been “no credible allegations” of abuse since 2020. We do not agree with father’s characterization of the allegations that occurred after 2020 as “not credible,” particularly in light of the district court’s credibility findings. Regardless, the district court specifically credited father’s *continuous denial* of his abusive behavior as a

The district court also made findings that the child would be permanently harmed by exposure to father's violent tendencies. The district court found that exposure to father's abusive patterns was harmful to children and that two children of his former partner and one of his children still bring up an incident where father attacked that partner. The district court also credited the DAIP expert's testimony that domestic violence negatively impacts children in the home and can become directed toward children, particularly as they grow older.

These findings are supported by the record. The DAIP expert testified about how children may be used as leverage in committing violence against a partner and can become the target of such violence if they are noncompliant. The expert also testified about how exposure to domestic violence, even without direct observation, can teach a child to adopt similar behavior or tolerate similar behavior in a future partner. And the district court heard evidence about the lasting impact of father's past violence on children. One partner called the police after an incident in which father allegedly assaulted her in front of her children and his child with another partner. Two of those children have been in therapy for four years following that incident and father's child still talks about it with their mother. Even father testified that witnessing domestic violence harms children and children are "little sponges" who absorb behavior.

The district court made findings about the connection between father's behavior and his relationship with the child, and findings that father's behavior would continue for an

source of present harm for the child, and the absence of allegations in the immediate recent past has no bearing on his current attitude.

indefinite, prolonged period of time and permanently harm the child. Because the district court made the necessary findings to determine father was palpably unfit and these findings were supported by the record, we see no abuse of discretion by the district court in concluding that there was a statutory ground to terminate father's parental rights.

II. The district court did not abuse its discretion by determining that termination of father's parental rights was in the best interests of the child.

Father argues that the district court abused its discretion in determining that termination was in the best interests of the child because father never had an opportunity to show that he could parent the child and it is in the best interests of the child for father to maintain his parental rights. We disagree.

A district court may terminate parental rights only if it is in the child's best interests. *S.E.P.*, 744 N.W.2d at 385. When a statutory basis to terminate parental rights under Minn. Stat. § 260C.301, subd. 1 (2022), exists "the best interests of the child must be the paramount consideration." Minn. Stat. § 260C.301, subd. 7. When addressing the best interests of a non-Indian child in a termination proceeding, the district court must consider (1) "the child's interests in preserving the parent-child relationship," (2) "the parent's interests in preserving the parent-child relationship," and (3) "any competing interests of the child." Minn. R. Juv. Prot. P. 58.04(c)(2)(ii); *see In re Welfare of Child. of J.C.L.*, 958 N.W.2d 653, 656-57 (Minn. App. 2021) (distinguishing best-interests test for termination matters from best-interests test for non-termination matters), *rev. denied* (Minn. May 18, 2021). Where the interests of the parent and the child conflict, the interests of the child are paramount. Minn. Stat. § 260C.301, subd. 7. We review a district court's best-interests

determination for an abuse of discretion. *In re Welfare of Child of J.R.R.*, 943 N.W.2d 661, 669 (Minn. App. 2020).

The district court found that father expressed an interest in having the child in his custody. The district court found that the child and their sibling, who was living with the same foster parents, had a very close relationship and that the child's foster family was stable and loved the child very much. It also found that the social worker believed the child's foster parents were open to a contact and communication agreement. The district court found that the social worker and the child's guardian ad litem both believed that it was in the child's best interests to remain with their foster parents and to terminate father's parental rights, and it credited their testimony. The district court found that, although father asserted that he made progress to better himself, he was unwilling to address the reasons for the child's out-of-home placement. The district court found that the child's opportunity to be placed in a safe and secure adoptive home, with a biological sibling, while still young, weighed heavily in favor of termination of father's parental rights. Ultimately, it found that in balancing father's interests and the child's interests, a relationship with father would be more detrimental than beneficial to the child.

These findings are supported by the record. The social worker testified that father was excited when he learned that the child was his, and father testified that he pursued his parental rights because he cares about his children, and he felt he would be putting his children's lives at risk if he did not pursue his rights. But the social worker and the guardian ad litem both testified to their belief that it was in the child's best interests to terminate father's parental rights. They testified that child was doing well with their foster family.

The social worker testified that the foster parents would be open to a communication agreement. The guardian ad litem testified about the bond between the child and their biological sibling, and they could not say the child and father had the same bond given the limited nature of their visitations. And, as discussed in the previous section, the record contains evidence that father continued to deny that he had engaged in problematic behavior and failed to meaningfully participate in the services provided to address that behavior.

Because the district court properly found that father had an interest in maintaining his relationship with the child, but that this interest was outweighed by the child's interests, and its findings are supported by the record, we see no abuse of discretion in its decision to terminate father's parental rights. Overall, the district court's thorough and detailed order supports its decision to terminate father's parental rights.

Affirmed.